

HOUSE BILL REPORT

ESSB 6037

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to removing oversight of the department of licensing from specific businesses and professions.

Brief Description: Removing oversight of the department of licensing from specific businesses and professions.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Fairley and Pridemore; by request of Governor Gregoire).

Brief History:

Committee Activity:

Commerce & Labor: 3/25/09, 3/27/09 [DP].

Brief Summary of Engrossed Substitute Bill

- Removes regulatory authority over employment agencies, whitewater river outfitters, sellers of travel, commercial telephone solicitors, camping resorts, and auctioneers from the Department of Licensing.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Alison Hellberg (786-7152)

Background:

The Department of Licensing.

The Director of the Department of Licensing (DOL) regulates over 30 businesses and professions and advises the Governor and the Legislature in matters related to these businesses and professions. License is defined as a certificate of registration, certificate of qualification, certificate of competency, certificate of authority, and any other instrument, by

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whatever name designated, authorizing the practice of a profession or calling, the carrying on of a business or occupation, or the doing of any act required by law to be authorized by the state.

In addition to several other professions and businesses, the DOL regulates employment agencies, whitewater river outfitters, sellers of travel, commercial telephone solicitors, camp resorts, and auctioneers.

Employment Agencies.

Employment agencies must be licensed by the DOL, maintain a \$2,000 bond, and comply with certain requirements covering the form and substance of contracts with customers, fees that may be charged for services, disclosure to customers of information about the agency, and customer complaint procedures. An agency that operates without a license may be sued by its customers for amounts paid to the agency.

Whitewater River Outfitters.

A Whitewater River Outfitter License, issued by the DOL, is required for businesses carrying, or advertising to carry, for-hire passengers on whitewater sections of Washington rivers. The whitewater river trips must, among other requirements, be operated by guides who have completed an approved lifesaving training course and training program on whitewater rivers.

Sellers of Travel.

A "seller of travel" includes a person, firm, or corporation that sells, provides, furnishes contracts for, or arranges or advertises to arrange for any travel services. Sellers of travel must be registered with the DOL, maintain a surety bond, maintain trust accounts for sums received for travel services, and comply with the requirements related to advertising, disclosures to customers, and cancellations and refunds.

Commercial Telephone Solicitors.

A commercial telephone solicitor license, issued by the DOL, is required for businesses making unsolicited commercial telephone calls and selling goods or products during the call. It is also required for those who offer free prizes by mail and invite a telephone response. Licensees must follow certain requirements and violations of any of the prohibited practices are enforced by the DOL and are also violations of the Consumer Protection Act (CPA).

Camp Resorts.

In order to offer or sell a camping resort contract in Washington, the contract must be registered with the DOL. Camp resort companies and salespersons are required to register and must meet certain requirements such as providing written disclosures, financial statements, and non-disturbance agreements for the contracts that are sold to consumers. These requirements are enforced by the DOL.

Auctioneers.

Auctioneers and auction companies must be licensed by the DOL. Auctioneers are required to maintain a \$5,000 bond and auction companies are required to maintain a bond from \$5,000 to \$25,000, depending on the value of goods and real estate sold at auctions. Licensees must also comply with certain requirements related to client trust accounts,

bidding, newspaper advertisements, and rights of clients. The requirements are enforced by the DOL and prohibited practices are also violations of the CPA.

The Consumer Protection Act.

The CPA prohibits unfair or deceptive practices in trade or commerce. The CPA may be enforced by private parties, the state, counties, municipalities, and all political subdivisions of the state. In a lawsuit for a CPA violation, a prevailing plaintiff is entitled to recover: (1) actual damages sustained; (2) the costs of the suit; and (3) reasonable attorney's fees. Additionally, a court has the discretion to award additional damages in the amount of up to three times the actual damages.

To prevail on a private CPA claim, a plaintiff must show: (1) an unfair or deceptive act or practice that occurs in trade or commerce; (2) a public interest; (3) injury to the plaintiff in the plaintiff's business or property; and (4) a causal link between the unfair or deceptive act and the injury suffered.

Summary of Bill:

The following businesses are no longer licensed by the DOL:

1. employment agencies;
2. whitewater river outfitters;
3. sellers of travel;
4. commercial telephone solicitors;
5. camp resorts; and
6. auctioneers.

Employment Agencies.

The Attorney General may examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Records must be maintained for four years. Before conducting any business as an employment agency, each employment agency must file and maintain a surety bond with the Attorney General in the sum of \$20,000 for any person injured or damaged as a result of any violation by the employment agency or the agency's agent.

Each employment agency is required to post, in a conspicuous place in each office in which it conducts business, notice that complaints concerning possible violations of law may be made to the consumer protection unit of the Office of the Attorney General. Any violations are also violations of the CPA.

Whitewater Rafting.

While carrying passengers for hire on whitewater rivers, a whitewater river outfitter must carry proof of liability insurance for a minimum of \$300,000 per claim for occurrences by the whitewater river outfitter that result in bodily injury or property damage.

Sellers of Travel.

A person who suffers monetary loss by a prohibited act may bring a civil action in court against a seller of travel who committed the violation. A civil action must be filed no later than one year following the alleged violation or completion of travel by the customer, whichever occurs later. Any violations are also violations of the CPA.

Service of process upon a nonresident seller of travel must be made by leaving a copy of the process with the Secretary of State. The fee for the service of process must be determined by the Secretary of State by rule.

Telemarketing.

Each commercial telephone solicitor must appoint the Secretary of State as an agent to receive civil process if the commercial telephone solicitor has no agent.

Camp Resorts.

If a camping resort operator sells or otherwise permanently withdraws a camping resort from use by purchasers, a schedule for damages is specified. Operators must also provide a number of disclosures including those related to the operator, the nature of the purchaser's interest in the camping resort, significant facilities and services of the resort, a summary of relevant state and local regulations, and restraints on the transfer of camping resort contracts. Any violations of the provisions are also violations of the CPA.

Auctioneers.

Each auctioneer and each auction company must obtain and maintain a surety bond in the amount of \$5,000 for the benefit of any person injured or damaged as a result of any violation by the auctioneer or auction company. Any violations of the provisions are also violations of the CPA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 704, related to receivers, which takes effect July 1, 2010.

Staff Summary of Public Testimony:

(In support) This bill is part of the Governor's reform package to reduce the size and scope of government and streamline governmental services. Last fall the Governor asked her cabinet agencies to give suggestions on how to achieve these goals. The full licensing of these businesses does not make sense in today's economy. There will still be consumer protections and these programs generate very few complaints. The fiscal note is a surprise to the Governor's Office. There is no case history to show that there would be this many complaints.

Washington is the only state in the west that requires licensing of auctioneers. Consumers will still be protected because of the bonding requirements and the CPA violation. In fact,

the penalties will be harsher than under current law because the CPA allows for treble damages.

(Opposed) None.

Persons Testifying: Kathleen Drew, Governor's Policy Office; Ralph Osgood, Department of Licensing; and Charles Beck.

Persons Signed In To Testify But Not Testifying: None.